

1 HONORABLE RICHARD A. JONES
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 HUNG TIEN LEU,
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11 Petitioner,

v.

12 JEH JOHNSON,¹ in his capacity as
Secretary of Homeland Security, et al.,
13
14 Respondents.

CASE NO. C13-1979RAJ
ORDER DISMISSING CASE

This matter comes before the court on Respondents' motion to dismiss this action. Petitioner did not oppose the motion. For the reasons stated below, the court GRANTS the motion (Dkt. # 16) and directs the clerk to DISMISS this action and enter judgment for Respondents.

Petitioner wants the court to decide whether he should be naturalized as a citizen of the United States. He cites only two sources of authority for the court to naturalize him: 8 U.S.C. § 1447(b) and 28 U.S.C. § 1361.

Respondents have demonstrated that 8 U.S.C. § 1447(b) is inapplicable in this case. That statute applies when the government "fail[s] to make a determination [on a naturalization application] under section 1446 of this title before the end of the 120-day period after the date on which the examination is conducted", in which case "the

¹ The court substitutes Secretary Johnson for his predecessor, in accordance with Federal Rule of Civil Procedure 25(d).

1 applicant may apply to the United States district court for the district in which the
2 applicant resides for a hearing on the matter.” 8 U.S.C. § 1447(b). Here, Petitioner does
3 not dispute that Respondents made a determination on his naturalization application; they
4 denied it. Thereafter, he invoked 8 U.S.C. § 1447(a) to request a hearing before an
5 immigration officer. 8 U.S.C. § 1447(a) (“If, after an examination under section 1446 of
6 this title, an application for naturalization is denied, the applicant may request a hearing
7 before an immigration officer.”). For that reason, § 1447(b) is inapplicable. Another
8 statute, 8 U.S.C. § 1421(c), allows a person “whose application for naturalization under
9 this title is denied[] after a hearing before an immigration officer under [8 U.S.C.
10 § 1447(a)]” to review that denial via the Administrative Procedures Act. But Petitioner
11 did not mention § 1421(c) or the Administrative Procedures Act in his complaint, and the
12 court assumes from his silence that he does not wish to invoke either statute.

13 Respondents have submitted evidence that Petitioner is currently in removal
14 proceedings. Although Petitioner has appeared before an immigration officer regarding
15 his naturalization petition, Respondents are withholding a decision on the naturalization
16 pending the completion of his removal proceedings. At the time Petitioner filed his
17 complaint, Respondents had yet to commence removal proceedings in an immigration
18 court. Respondents now present evidence that they have done so, and Petitioner presents
19 no argument to the contrary. Petitioner also does not contest that Respondents have
20 authority, in accordance with 8 U.S.C. § 1429, to decline to decide his administrative
21 hearing on the denial of his naturalization petition until his removal proceedings are
22 resolved. *See Perdomo-Padilla v. Ashcroft*, 333 F.3d 964, 970 (9th Cir. 2004) (“The
23 natural reading of this statute is that removal proceedings and final removal orders are to
24 take precedence over naturalization applications.”). The court thus has no basis, on this
25 record, to conclude that it could grant mandamus relief via 28 U.S.C. § 1361.

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ORDER – 2

1 For these reasons, the court GRANTS Respondents' unopposed motion to dismiss.
2 Dkt. # 16. The clerk shall DISMISS this action and enter judgment for Respondents.

3 DATED this 19th day of May, 2014.

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7 The Honorable Richard A. Jones
8 United States District Court Judge
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